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November 30, 2007

FINAL STATEMENT OF REASONS FOR AMENDMENTS TO THE CALIFORNIA COASTAL COMMISSION'S FILING FEE REGULATIONS (Title 14, Division 5.5, California Code of Regulations)

UPDATE TO THE INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons was made available to the public on September 14, 2007. The Commission made six revisions to the originally proposed amendments. These revisions are described below. The Commission adopted the amendments, as revised, on November 14, 2007. The final text of the regulations is attached.

Revision 1

The Commission approved an additional increase in fees for projects that include more than 100 cubic yards of grading. The reason for this revision is that the originally proposed fees were not high enough to reflect the complexity of review involved in grading projects, which substantially disturb coastal resources. This is because large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources. The grading fee schedule is in section 13055(a)(4), and is shown below.

The originally proposed fees for grading were:

Cubic Yards of Grading	Proposed Fee
51 to 100	$500
101 to 1000	$750
1001 to 10,000	$1,000
10,001 to 100,000	$1,250
100,001 or more	$1,500

The revised fees for grading, adopted by the Commission on November 14, 2007, are shown in bold:

Cubic Yards of Grading	Adopted Fee
51 to 100	$500
101 to 1000	**$1,000**
1001 to 10,000	**$2,000**
10,001 to 100,000	**$3,000**
100,001 to 200,000	**$5,000**
200,001 or more	**$10,000**

Revision 2

Because the Commission's fee schedule was last updated in 1991, it is currently based on outdated development costs. The Commission approved a revised schedule of cost categories that is more proportionate to the fee schedule which is based on square footage. The revised cost categories and associated fee schedule were adopted by the Commission on November 14, 2007. They are in section 13055(a)(5), and shown, in bold, below.

Current Development Cost Categories	**Revised Development Cost Categories**	**Adopted Fee**
$50,000 or less	**$100,000 or less**	**$3,000**
$50,001 to $100,000	**$100,001 to $500,000**	**$6,000**
$100,001 to $500,000	**$500,001 to $2,000,000**	**$10,000**
$500,001 to $1,250,000	**$2,000,001 to $5,000,000**	**$20,000**
$1,250,001 to $2,500,000	**$5,000,001 to $10,000,000**	**$25,000**
$2,500,001 to $5,000,000	**$10,000,001 to $25,000,000**	**$30,000**
$5,000,001 to $10,000,000	**$25,000,001 to $50,000,000**	**$50,000**
$10,000,001 to $100,000,000	**$50,000,001 to $100,000,000**	**$100,000**
$100,000,001 or more	**$100,000,001 or more**	**$250,000**

Revision 3

The originally proposed fee for subdivisions was $3,000 for each of the first four lots and $500 for each additional lot. The Commission approved an additional increase so that the revised fee is $3,000 for each of the first four lots and $1,000 for each additional lot. The reason for this revision is that the originally proposed fee of $500 for each lot over four lots was too low as compared to the average complexity of this type of application review. This revision, adopted by the Commission on November 14, 2007, is in section 13055(e) of the regulations.

Revision 4

The Commission approved additional language in section 13055(g) that would exempt applicants for single-family homes from indemnification conditions. This exemption would not increase fees; it would prevent the Commission from requiring some applicants to reimburse its attorney's

fees. The proposed revision, adopted by the Commission on November 14, 2007, adds the following sentence to section 13055(g):

> "Notwithstanding the foregoing, the commission shall not require an applicant for a permit for one single-family dwelling to reimburse it for litigation costs or fees that the commission may incur in defending a judicial challenge to the commission's approval of the permit."

Revision 5

The originally proposed regulation amendments included the following fee reduction for green buildings:

> "The executive director of the commission may waive the filing and processing fee in full or in part for an application that displays extraordinary characteristics which substantially benefit coastal resources, such as sustainable site and building design, water and energy efficiency, habitat protection and public transportation elements."

The Commission revised the proposed language to include standard criteria for evaluating eligibility, a specific rate of discount, and a mechanism for implementing the fee reduction, so that the regulation is clearer for applicants and easier for the Commission to implement.

The language of the revised regulation, adopted by the Commission on November 14, 2007, is in section 13055(h)(3), on page 6 of Exhibit A, and below:

> "For applications received prior to January 1, 2015, the executive director of the Commission may reduce the filing fee by 40% for projects that are certified at a minimum of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Gold standard or equivalent. After registering a project with an approved third-party certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute acceptable to the executive director in the amount of the remainder of the required filing fee. The applicant shall submit to the executive director proof of certification at a minimum of LEED Gold or equivalent within three years of the date of permit issuance. Upon receipt of the proof of certification the executive director shall release the letter of credit or other cash substitute to the applicant. If the applicant does not submit to the executive director proof of certification within three years of the date of permit issuance, the Commission will redeem the letter of credit or other cash substitute. The executive director may grant one extension of the three year deadline for good cause. A request for such an extension must be submitted to the executive director in writing at least 60 days prior to the deadline, outlining the reason for the request and the expected completion date. The extension shall not exceed one year."

Revision 6

The Commission approved a reference to the proposed fee for appeals in section 13111(b). The authority for amendment to this regulation is Public Resources Code section 30333 and the reference is Public Resources Code section 30620(c). The purpose of this revision is to ensure the regulations are internally consistent, in light of the proposed amendments. The revision will simply clarify the regulations, so that someone reading section 13111 will be aware of the associated fees. The revision, adopted by the Commission on November 14, 2007, is shown on page 1 of Exhibit B and below:

> "For an appeal to the Commission by an applicant pursuant to Public Resources Code sections 30602 or 30603(a)(5) of a denial of a coastal development permit application, the applicant shall submit a filing fee in accordance with the provisions of section 13055(b)(5)(B)."

LOCAL MANDATE

The proposed regulations do not impose a local mandate.

ALTERNATIVES

No alternative the Commission has considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

The Commission has considered four alternatives to the proposed regulations. The first alternative is to make no changes to the regulations. The second is to increase the existing fees according to the inflation that has occurred since they were established in 1991. The third alternative is to increase the existing fees by 8, as was done in the most recent fee increase which took place in 1991. And the final alternative considered by the Commission is to charge fees based on a cost recovery system.

The first alternative is to make no changes to the regulations. However, the fees the Commission currently charges applicants are low and cover only a very small portion of the costs for the Commission's regulatory program. The Commission's filing fees have not been raised since 1991 and they are substantially lower than the fees charged by local governments with certified LCPs.

The second alternative is to increase the existing fees according to inflation that has occurred since they were established in 1991. The change in inflation from 1991 to 2006, calculated using the California Consumer Price Index, is approximately 150%.[1] However, that increase is not sufficient to address the time and effort it takes to review projects given the current statutory and regulatory environment, risk of litigation, and high level of technical information associated with applications.

[1] The 2006 Annual California Consumer Price Index value was 210.5. The 1991 Annual California Consumer Price Index value was 140.6. Change in inflation from 1991 to 2006 is 210.5/140.6 = 1.497

The third alternative is to increase the existing fees by a factor of 8, as was done in the last fee increase which took place in 1991. However, if the Commission were to apply this increase, some fees would be disproportionate to the time spent by staff to review the applications, and some fees would be disproportionate to each other. For example, the fee for a 12,000 square foot commercial building would be $16,000 more than the fee for an 8,000 square foot commercial building.

The final alternative is to charge fees based on a cost recovery system. Many government agencies charge filing fees based on cost recovery. In these agencies, all staff involved in the review of a project track the time spent on each filing, and the applicant is charged accordingly. The Commission's current staff structure could not support a cost recovery system. It is time consuming for analysts to track their time, and it would require additional staff in the accounting department. Also, a drawback of cost recovery systems is that the cost of staff review to the applicant is difficult to predict. A full cost recovery system would result in much higher fees to applicants. Flat fees are the most predictable to the applicant.

NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The proposed amendments **will not have** a significant impact on business, or impair the ability of California businesses to compete with businesses in other states. This is because only a very small percentage of businesses in the coastal zone are required to pay the Commission's filing fees. These are the businesses which voluntarily elect to undertake development in the coastal zone and as a result, submit permit applications and other filings to the Commission. They are only required to pay a one time fee, typically at the time of development, which is a very small percentage of the project's total development cost. Additionally, once a local government has coastal permitting authority to issue permits within their jurisdiction, businesses will apply for a coastal development permit from their local government. The Commission's proposed fees are not excessive in comparison to those charged by local governments which issue coastal development permits in the coastal zone.

RESPONSE TO COMMENTS

The Commission is required to respond in writing to all public comments received during the rulemaking process. The following section describes the comments received and offers responses on behalf of the Commission. The comment letters are attached. Each comment letter is numbered, 1 through 19, and each individual comment is assigned a letter.

The Commission received 2 oral comments, one at the Commission's October 2007 hearing and one at the Commission's November 2007 hearing. Tobe Plough, an energy company representative, provided the comments at the October hearing, and Norbert Dall, consultant, provided the comments at the November hearing. These comments will be referred to as oral comment 20 and oral comments 21A through 21J.

Comments 1 through 7 and 20 and 21 were received during the comment period for the initially proposed amendments and comments 8 through 19 were received during the 15-day comment period for the revisions.

1) Comments 1A and 7N are requests for the Commission to provide wider public notice of the proposed regulations.

Response: In compliance with the laws and regulations governing the rulemaking process, the Commission has created a rulemaking mailing list which it has used to notice all known interested persons about the proposed rulemaking. The rulemaking mailing list was created in two steps. First, the Commission staff utilized the meeting agenda mailing list which contains approximately 694 entities and individuals throughout California, including public agencies, private and non-profit organizations and real property owners, who wish to receive the Coastal Commission's monthly agenda.

Using this mailing list, the Commission attached a notice in the September meeting agenda that described the Commission's intent to commence the rulemaking process. The notice requested that interested persons send their names and addresses to our office so that they can be placed on the rulemaking mailing list and receive future notice of the Commission's rulemaking proceedings.

The second step was to compile the rulemaking mailing list and mail the initial rulemaking materials to all interested persons. This mailing list continued to grow as the Commission received comments from additional interested persons.

In addition to providing notice through the rulemaking mailing list, the Commission posted all materials to its website, www.coastal.ca.gov, and provided notice of each public hearing through the monthly meeting agenda.

The proposed rulemaking will only affect those real property owners who, in the future, apply to the Commission to develop their property. Therefore, because it is impossible to determine which property owners will be affected, the Commission used the method described above to provide public notice of the regulation amendments.

2) In Comment 5A the commenter expresses his support for comment letter 4.

Response: Support noted. Comment letter 4 is addressed below.

3) Comments 1B, 2C, 3D, 4B, 6F, 8C, 10E, 11C, 12G, 14E, 15E, 16B, 18B and oral comment 21I are requests for additional public hearings. Comment 1B is a request for additional hearings at "reasonable geographic intervals along the coast." Comments 2C, 3D, 4B, 8C, 10E, 11C, 12G, 14E, 15E and 18B are requests for public hearings in Northern California; comment 6F is a request for a public hearing in the Santa Cruz/Monterey area and other regions in Northern California; comment 16B is a request for public hearings in all 6 coastal regions; and oral comment 21I states that a hearing in Northern California is necessary for the Commission to comply with Coastal Act section 30006.

Response: In compliance with the laws and regulations governing the rulemaking process and those governing the Commission's process, the Commission held a public hearing at the November Commission meeting in San Diego, after the 45-day comment period. The Commission also held public hearings at the July Commission meeting in San Luis Obispo and the October Commission meeting in San Pedro to provide the public with additional opportunities to give comments orally. During this time period only two interested persons gave public testimony at the Commission's public hearings.

The Commission is confident that the 45-day and 15-day written comment periods and three hearings provided the public with ample opportunity to comment on the proposed regulations, and that these hearings and comment periods are sufficient for full compliance with all Coastal Act requirements. Members of the public who were unable to attend the hearings can be assured that written comments have received the same level of consideration as comments provided orally. Also, members of the public were able to view the public hearings on the Commission's live meeting webcast.

4) Comment 1C is a request for the Commission to receive public comments via e-mail.

Response: In addition to other means of communication, Commission staff received public comment via e-mail (mcavalieri@coastal.ca.gov). The address was included in the contact information listed on the Notice of Proposed Rulemaking and on the Commission's website.

5) Comments 2A, 3B, 4D, 4F, 16D and oral comment 21D state that the proposed fee increase is too large, and that the resulting fees are too high.

Response: The Commission is aware that the fee increases are substantial. The reason they are so substantial is that the fees have not been increased since 1991. The fees have been unreasonably low for at least 10 years. To minimize this problem in the future, the proposed amendments include an automatic escalator, which will ensure the fees are increased each year by the rate of inflation.

6) Comments 4C and 4E state that the proposed fees are unreasonably high.

Response: The Commission has compared the proposed fees with a survey of the planning fees of other local governments in the coastal zone. The survey, entitled "Survey of Planning Fees in the Coastal Zone," is contained in the rulemaking file, and as exhibits in the October 2007 and November 2007 Commission Staff Reports which can be found on the Commission's website, www.coastal.ca.gov. The survey shows that the proposed fees are comparable to other planning fees in the region, especially considering that local government applicants pay additional fees for environmental review, but Coastal Commission applicants do not.

7) Comments 4E and 4G state that the proposed fees are unrelated to the cost of application review.

Response: The proposed fees were developed in relation to the average complexity and amount of review required for each type of application. The projected annual filing fee revenue that will result from the proposed fees is approximately $2M to $3.65M, which represents 20% to 37% of its estimated annual regulatory costs. This figure shows that the fees are indeed related to the cost of application review, and will not exceed actual costs. Full cost recovery, which is a standard practice of many local governments, would result in far higher fees and unpredictable costs to the applicant.

8) Comments 3C and 4H concern fair treatment of applicants.

Response: The Commission's fees are only charged in areas where it retains permit jurisdiction. If the Coastal Commission has permit jurisdiction, it will charge a filing fee; if the local government has permit jurisdiction, then it will charge a filing fee. Because the proposed fees are comparable to those charged by the planning departments of local governments in the coastal zone, applicants in the Commission's jurisdiction are not being treated differently than applicants in other areas.

9) Comments 4I and 6A express concern that the proposed fees should not be used to discourage development.

Response: The Commission fully agrees with this statement. In fiscal year 07-08, the legislature approved a budget augmentation for three staff analyst positions, but the Governor vetoed the augmentation, stating that he would only consider the Commission's budget augmentations after it raises its fees. The Commission is not in any way attempting to discourage development by raising its fees. The Commission is increasing fees to be in line with local governments and so that it can increase its staff to better serve applicants and protect coastal resources for the public.

10) Comment 4J states: "The proposed new and increased fees should not be based on ability to pay or as an opportunity to generate unwarranted revenues from coastal property owners."

Response: The ability of homeowners to pay fees played no role in developing the proposed fees. The proposed fees are based on the average complexity and review time required for each type of application. Based on a revised assessment of the Commission's complete regulatory costs, the fee revenues are projected to generate up to 20% to 37% of the Commission's estimated annual regulatory costs and will not exceed actual costs.

11) Comment 4K states that Coastal Commission fee increases should be limited similar to the way that property tax increases are limited by Proposition 13.

Response: Coastal Act section 30620(c)(1) authorizes the Commission to charge fees to reimburse the costs of application review, but it does not limit the amount of fee increases. The Commission acknowledges that the proposed fee increases are substantial. However, they are necessary because the fees have been artificially low for so many years. Also, the automatic fee escalator that has been included in the amendments will ensure future increases are more frequent and less substantial.

12) Comments 2B, 3E, 4A, 6E, 8B, 10D, 11B, 12I, 14D, 15D and 18A are requests to make materials available to Commissioners.

Response: All rulemaking materials and written public comments, including the Initial Statement of Reasons, have been made available to Commissioners as exhibits to Staff Reports prepared for the public hearings.

13) Comments 3A, 6B, 6D, 9A, 11A, 12A and 16A express general opposition to the proposed fees.

Response: Opposition noted.

14) Comment 6C expresses the opinion that decisions are made according to "personal board member agendas and pressure from sympathetic interest groups."

Response: Although the comment is not relevant to the proposed rulemaking, the Commission would like to respond; the Commission is charged with protecting California's coast and makes decisions based solely on the requirements of the Coastal Act and other applicable laws.

15) Comment 7A states that staff's proposal for amendments to the Commission's filing fee regulations is not posted on the Commission's website or available in print.

Response: There are several documents associated with the Commission's proposed rulemaking: the Commission's staff reports, including staff reports for the July, October and November Commission meetings; documents prepared for the OAL, including the Notice of Proposed Rulemaking and the Initial Statement of Reasons; and the proposed text of the regulation amendments.

As required by the APA, the Notice of Proposed Rulemaking was published in the OAL's California Notice Register (See Register 2007, No. 37-Z, September 14, 2007); the Initial Statement of Reasons and proposed text of the amendments were mailed to all interested persons; and the staff reports, which include the text of the proposed amendments, the Initial Statement of Reasons and the Notice of Proposed Rulemaking, were published on the Commission's website.

The Commission's website also has a link from the home page to a rulemaking page which includes the Initial Statement of Reasons, the Notice of Proposed Rulemaking and the proposed text of the regulation. Unfortunately, the link from the home page was removed for a period of approximately two weeks in October. This removal was an error on the part of Commission staff. However, although the home page link was not available during this period, the rulemaking page was available and could be found through the use of the Commission's search function, which is on the home page. Also, all materials could be found on the Commission's website through the posted staff reports.

Finally, contact information is included in the Notice of Proposed Rulemaking and the Initial Statement of Reasons, and Commission staff has been available to mail documents to any member of the public who requests them.

16) Comment 7B states the proposed fees are "contrary to law and not in the best interest of either California's coastal economy or environment."

Response: The proposed fees are not contrary to any laws applicable to the Commission; the Commission has determined that the impacts of the proposed fees on California's coastal economy will be insignificant; and, the proposed regulation amendments, which increase fees, will have no impact on the environment.

17) Comment 7C states that the increased fees will radically increase the cost of residential development.

Response: The proposed fees represent a small percentage of the overall cost of residential development. For example, a 5,000 square foot home, with a very modest construction cost of $120 per square foot,[2] would be assessed a fee of $4,500, if the fees are adopted as proposed. This fee is only .75% of the cost of development. Generally, market forces determine if construction costs are absorbed by the developer or passed on to the consumer. Either way, the impact of development fees on development cost is insignificant when viewed in comparison to median home prices.

18) Comment 7D states that the proposed fees allow the executive director to selectively reduce costs.

Response: The commenter is apparently referring to proposed sections 13055(h)(2) and 13055(h)(3), which allow the executive director to reduce fees for affordable housing projects and for green building projects. The originally proposed fee reduction for green building did lack criteria for determining which projects would qualify. However, the Commission approved a revision to this subsection, 13055(h)(3), which utilizes the U.S. Green Building Council's LEED Certification Program as a standard criteria. 13055(h)(2) allows the executive director to reduce fees only for projects that include affordable housing as defined by state statutes. Therefore, the discretion given to the executive director is limited.

19) Comment 7E states that the calculation of fees based on development cost includes project components that are outside the Commission's jurisdiction.

Response: The commenter is apparently referring to subsection 13055(a)(5)(B)(2) which provides a definition for development cost. This definition is currently used by the Commission's sister agency, the San Francisco Bay Conservation and Development Commission, and was approved by OAL during their recent rulemaking process. The Commission has used "development cost" as a basis for determining its application fees since at least 1991. It is a widely used and legitimate basis for determining the complexity and thus the burden on staff of processing an application. The fact that certain elements of the definition are not subject to direct

[2] Estimate based on the International Code Council's 2007 Building Valuation Data.

regulation by the Commission does not detract from their suitability for this purpose. The term "development cost" lacks a definition in the Commission's current regulations and this amendment would correct that deficiency.

20) Comment 7F states that Article XIII B of the State Constitution prevents the Commission from raising fees more than the increase in the California Consumer Price Index.

Response: Article XIII B regulates government spending, not the collection of fees, and therefore, it does not apply to the proposed regulation amendments. Also, as stated in comment 11, Coastal Act section 30620(c)(1), which authorizes the Commission to charge fees, does not limit the fee increases that can take effect at any one time.

21) Comment 7G states that the proposed fees are not supported in the Commission's July and October staff reports by "any rational documentation or analysis of actual Commission regulatory costs."

Response: The Commission's staff reports detail the method by which the proposed fees were developed. They provide descriptions of the review required for each type of application received, discuss the Commission's regulatory costs, and finally compare the proposed fees to the planning fees of other agencies to ensure they do not exceed typical planning fees in the area.

22) Comment 7H states that the proposed fees are not supported by an assessment of how the Commission could substantially reduce the cost of its regulatory program.

Response: The Commission operates under a very constrained budget. All major budget changes must be approved by the Department of Finance, the Legislature and the Governor as part of the state budget process. The Commission consistently works to minimize its operating costs.

23) Comment 7I states that showing the relationship between the proposed fees and the fees of local governments in the coastal zone is not pertinent because the Commission performs a more narrow regulatory function than local governments.

Response: The Fee Study used to compare the Commission's proposed fees against the fees of other local governments in the coastal zone only surveyed the *planning* fees of local governments. These are the fees collected for issuing coastal development permits, which is the same function performed by the Coastal Commission. The fees for local government review relating to other government functions, including building permit fees, and school and fire impact fees, are separate from the planning fees. It was, however, impossible to create an exact comparison between local government fees and the fees of the Commission. For example, local governments charge additional fees for environmental review, while the Commission includes this service in its application fee.

24) Comment 7J states that the Commission's application fees have no relationship to regulatory services because the fee revenue is directed to the Coastal Conservancy.

Response: Although the actual funds are transferred to the Coastal Conservancy, the fees relate to the cost of regulatory services in that they are proportionate to the average level of review required for each type of application.

25) Comment 7K states that the Commission should support increased annual budget allocations to fund the State mandate for LCPs.

Response: The Commission fully supports increased budget allocations to further the LCP program.

26) Comment 7L relates to the Commission's post-LCP regulatory program.

Response: This comment is unrelated to the proposed regulation amendments. However, the Commission's post-LCP regulatory program operates in conformity with the Coastal Act and all other applicable laws.

27) Comment 7M is a request for the Commission to implement a cost recovery system.

Response: The Commission is not proposing to base fees on a cost recovery system at this time, in part, because there is no funding available to set up such a program. At the very least, a cost recovery system would require additional staff in the accounting department, and the Commission is unable to increase staff until its fees are raised as requested by the Governor.

The proposed fee increase does not in any way preclude the Commission from moving to a cost recovery system in the future. However, it should be noted that full cost recovery, which is a standard practice of many local governments, would result in far higher fees and unpredictable costs to the applicant.

28) Comment 7O is a request for the Commission to advertise the proposed fees in every newspaper of record in the State.

Response: The Administrative Procedure Act and the OAL regulations which govern the rulemaking process do not require state agencies to notify the public of proposed rulemaking through newspaper publications. Publishing notices in newspapers is very expensive, and likely not as effective as web posting. As required by the APA, the Notice was published in OAL's rulemaking register and on the Commission's website, and was mailed to interested persons as described above in response number 1.

29) Comment 8A states that some proposals, such as the revisions to grading fees, indemnification and green building fees, are independent of the Commission's purpose and detrimental to community support for the Commission. It also states that the fee structure should be fair.

Response: The Commission is mandated to provide services to the public, and state statutes authorize the Commission to collect reasonable fees for the provision of those services. The purpose of the proposed regulation amendments is to establish fees that are based on a portion of

the average costs the Commission incurs in processing permit applications and other filings. The Commission has not raised its fees in 16 years.

The Commission has approved a grading fee schedule that reflects the increased complexity of review required for increased amounts of grading. Note that the fee for the smallest increment of grading has not been revised at all, and larger increments of grading have seen higher increases in fees. This is because large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources.

The proposed revision regarding indemnification is not a requirement for indemnification; it is a regulation that would prevent the Commission from requiring indemnification from applicants for single-family homes. The Commission has the authority under existing statutory and regulatory provision to require indemnification and thus may continue to require indemnification from applicants on a case-by-case basis, as necessary.

The revision for the green building reduction specifies criteria that an applicant must comply with before qualifying for the reduction. This criteria could present a substantial amount of information, especially if an alternative to the U.S. Green Building Council's LEED certification is utilized, and therefore, some discretion is appropriate. However, all applicants are able to appeal decisions of the executive director directly to the Commission, and the Commission has the authority to waive or reduce filing fees through section 13055(h)(1). Therefore, the Executive Director's discretion is ultimately controlled by the 12-member Commission, and does not rest with one person.

30) Comment 8D states that it is important to be mindful of the little guy.

Response: Before beginning the research and analysis required to proceed with this rulemaking process, staff established four goals for drafting the amendments: 1) to determine fees that are commensurate with the amount of work necessary for the Commission and staff to review applications; 2) to determine fee amounts that are comparable to local governments in the coastal zone; 3) to not unduly burden homeowners and small business owners; and 4) to create a fee schedule that is fair and reasonably simple to implement. The Commission has kept these goals in mind throughout the rulemaking process.

Specifically regarding goal number 3, which is essentially to be "mindful of the little guy", the Commission would like to point out that the existing fee structure, which was used as a basis for the proposed fees, is organized so that small projects are charged substantially less than large projects. This can also be seen throughout the proposed fees. For example, the fee for a small home is far less than the fee for a large home. Also, many small projects are issued waivers or administrative permits which are less costly than regular permits.

31) Comments 10A, 12B, 14A, 15A, 17A and 18C state that the proposed revision to the grading fees is too large of an increase and does not reflect the level of work required.

Response: The Commission has approved a grading fee schedule that reflects the increased complexity of review required for increased amounts of grading. Note that the fee for the smallest increment of grading has not been revised at all, and larger increments of grading have seen higher increases in fees. This is because large amounts of grading require additional technical analysis, water quality impact analysis, and also may require projects to be redesigned to ensure conformity with Coastal Act policies that require development to minimize landform alteration and minimize impacts to coastal resources.

32) Comments 10B, 12C, 14B, 15B and 17B refer to the revision regarding indemnification.

Response: The proposed revision regarding indemnification is not a requirement for indemnification; it is a regulation that would prevent the Commission from requiring indemnification from applicants for single-family homes. The Commission has the authority under existing statutory and regulatory provision to require indemnification and thus may continue to require indemnification from applicants on a case-by-case basis, as necessary.

33) Comments 10C, 11D, 14C and 15C state that the revision to the proposed amendment which would reduce fees for green buildings confers too much discretion to the executive director.

Response: The revision for the green building reduction specifies criteria that an applicant must comply with before qualifying for the reduction. This criteria could present a substantial amount of information, especially if alternatives to the U.S. Green Building Council's LEED certification is utilized, and therefore, some discretion is appropriate. However, all applicants are able to appeal decisions of the executive director directly to the Commission, and the Commission has the authority to waive or reduce filing fees through section 13055(h)(1). Therefore, the minimal discretion that does exist is ultimately controlled by the 12-member Commission, and does not rest with one person.

34) Comment 12E states that all fees should be based on actual costs and should not be punitive or revenue based.

Response: A fee system based on actual costs is referred to as a cost recovery system. The Commission is not proposing to base fees on a cost recovery system at this time, in part, because there is no funding available to set up such a program. At the very least, a cost recovery system would require additional staff in the accounting department, and the Commission is unable to increase staff until its fees are raised as requested by the Governor. Moreover, the California Court of Appeals, in *Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4th 935, 944 held that it was not unreasonable for an agency to utilize the flat fee system in preference to a full cost recovery system.

The proposed fee increase does not in any way preclude the Commission from moving to a cost recovery system in the future. However, it should be noted that full cost recovery, which is a standard practice of many local governments, would result in far higher fees and unpredictable costs to the applicant.

The fees that are being proposed are neither punitive nor revenue based. The fees were developed by expanding and modifying the existing fee schedule, and are based on the proportionate complexity of review required for the average application from each fee category.

35) Comment 12F is a request for the Commission to publish justification for the fee increases prior to a public hearing.

Response: The Commission has published justification for the fee increases in the Initial Statement of Reasons and the staff reports which have been published before each public hearing on the matter.

36) Comment 12H states that the public should be given adequate time to express their thoughts on the proposed amendments.

Response: The Commission agrees that the public should be allowed to express their thoughts and provide comments on the proposed rulemaking. The rulemaking process which is put forth in the Administrative Procedure Act and administered by the Office of Administrative Law is very inclusive of public comments. The Commission has complied with all applicable laws and regulations. The proposed rulemaking was first in front of the Commission for a public hearing in July 2007. Since the Commission officially initiated the rulemaking process, there have been two official public comment periods: the first was a 45-day comment period and the second was a 15-day public comment period. The Commission is confident that the public has been sufficiently notified of the proposed rulemaking.

37) Comment 12J states that "fees are taxation in disguise and infringe on the property rights of every owner."

Response: In *Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4th 935, 944, the California Court of Appeals distinguished between fees and taxes, saying: "Ordinarily, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted, and most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." The court goes on to say that "Fees charged for the costs of regulatory activities are not special taxes under a California Constitution article XIII A analysis if the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and they are not levied for unrelated revenue purposes."

Further, the proposed fees will help the Commission to strengthen California's coastal program. The Commission's program regulates development along the coast to protect coastal resources and benefits both public and private property in the coastal zone.

38) Comment 13 states that the Commission does not have the statutory authority to impose an indemnification condition, rendering the exemption unnecessary.

Response: The Commission has the authority under existing statutory and regulatory provision to require indemnification and thus may continue to require indemnification from applicants on a

case-by-case basis, as necessary. The proposed regulation amendment has no effect on this ability. The regulation simply states that if the Commission requires indemnification in the future, it will under no circumstances require it from an applicant for a single-family home.

39) Comment 16C states that the proposed regulations are "variously inconsistent, ambiguous and unnecessary." It goes on to say that "the fee increases proposed [are] not authorized by law and are not necessary to accomplish the lawful and important functions of the commission."

Response: These comments appear to refer to the originally proposed amendments, not the revisions, and because they were received on November 13, 2007, during the comment period for revisions, the Commission is not required to respond to them.

However, if the comment had been received by the appropriate deadline, the Commission's response would be that the fees are specifically authorized in section 30620(c)(1) of the Coastal Act. This filing fee update, which would create revenue constituting a slightly larger portion of the Commission's costs, is necessary and appropriate.

40) Comment 16E and 18D refer to indemnification.

Response: The proposed amendment does not in any way require applicants to indemnify the Commission. The Commission has the ability to require indemnification on a case-by-case basis. The proposed regulation amendment has no effect on this ability. The regulation simply states that if the Commission requires indemnification in the future, it will under no circumstances require it from an applicant for a single-family home.

41) Comment 16F states that the Commission has admitted the projected filing fee increase is "unnecessary to provide mandated services to the affected regulated persons."

Response: The Commission has never stated that the increased filing fee revenue is unnecessary for mandated services. Throughout the rulemaking process, the Commission has stated that its goal is to increase filing fee revenue so that it will represent a larger portion of the Commission's regulatory costs. The projected filing fee revenue does not exceed the cost of application review. The commenter goes on to say that the Commission is limited to requiring a reasonable filing fee plus the actual cost to the Commission. The proposed fees are well within these limitations because they are less than the actual cost of review.

42) Comment 16G states that the Commission's comparison of the proposed fees with the fees charged by local governments is irrelevant because the Commission was created by the legislature pursuant to the Public Resources Code.

Response: The Commission compared the proposed fees with comparable fees charged by local governments to ensure the proposed fees are reasonable. The fee study looked at the planning fees charged by local governments that issue coastal development permits. The planning costs to local governments in issuing coastal development permits is very similar to those incurred by the Commission, except that local governments charge additional fees for environmental review, while the Commission does not. This means that the Commission's actual costs include an

additional service which is not reflected in this fee comparison. Regardless of this discrepancy, the Commission used the fee study as a way to compare its proposed fees against comparable fees charged by agencies that are providing similar services.

43) Comment 16H and oral comment 21G state that the Commission has not offered any project category-specific data or analysis regarding the actual cost of providing regulatory services.

Response: The Commission is proposing to amend its existing flat fee structure. It has increased fees so that they are proportionate to the average complexity of each type of application. In establishing regulatory fees, the Commission is not required to carry out a precise cost-fee ratio. In a relevant case about determining regulatory fees (*Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4th 935, 944) the California Court of Appeals states: "Legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the fee."

44) Comment 16I states that the Commission does not have the legal authority to (1) require payment of the higher of two alternative fee schedules (cost based or square footage based), (2) exact fees for development outside the coastal zone, (3) impose appeal fees, (4) require indemnification, (5) adopt a non-governmental green building standard as criteria for a fee reduction, or (6) delegate "project-specific fee reductions to the executive director."

Response: Sub-comments 1, 2, 3 and 6 refer to originally proposed amendments not the revisions, but the comments were received after the deadline for comments on the originally proposed amendments had passed. However, if these comments were received by the appropriate deadline, the Commission would have responded as included in the following response to all 6 sub-comments.

(1) In section 30620(c)(1) of the Coastal Act, the Commission is authorized to charge applicants filing fees and for the reimbursement of actual expenses. The Commission's fee structure allows the Commission to recover a portion of the expenses it incurs in processing permit applications. The proposed amendment which would require the payment of two alternative fee schedules is a clarification of the existing regulations. In the existing regulations, both fee structures are included, but there is no guidance as to which fee should be charged. The proposed amendment clarifies this. Both methods are legitimate ways to calculate the relative complexity of the application. However, the complexity of some projects, such as large energy projects, is not necessarily reflected in the square footage, and the complexity of other projects, for example large storage warehouses, is not necessarily reflected in projects costs. Therefore, the higher fee calculated should be charged because it will most accurately reflect the average complexity of an application.

(2) The proposed amendments would not exact fees for development outside of the coastal zone. The commenter is apparently referring to subsection 13055(a)(5)(B)(2) which provides a definition for development cost which includes costs that are outside the Commission's jurisdiction. The definition refers to the Commission's regulatory jurisdiction, not its geographic jurisdiction. This definition is currently used by the

Commission's sister agency, the San Francisco Bay Conservation and Development Commission, and was approved by OAL during their recent rulemaking process. The Commission has used "development cost" as a basis for determining its application fees since at least 1991. It is a widely used and legitimate basis for determining the complexity and thus the burden on staff of processing an application. The fact that certain elements of the definition are not subject to direct regulation by the Commission does not detract from their suitability for this purpose. The term "development cost" lacks a definition in the Commission's current regulations and this amendment would correct that deficiency.

(3) Section 30620(c)(1) of the Coastal Act authorizes the Commission to charge filing fees for any filing, except LCP submittals. Although the Commission could charge a fee for all appeals, it determined that this may discourage public participation in the coastal program. However, the Commission determined it would be appropriate to charge appeal fees to applicants who are appealing their own project to the Coastal Commission because it was denied at the local level. In this circumstance, the person filing the appeal is the direct beneficiary of the Commission's staff resources and a fee would be appropriate.

(4) The regulation amendments do not require indemnification. The proposed amendment would prevent the Commission from requiring an applicant for a single-family home to indemnify the Commission. This amendment in no way alters the existing authority of the Commission to require indemnification on a case-by-case basis.

(5) The Commission is proposing to offer a fee reduction for green buildings. This type of incentive for green building is appropriate, given the Coastal Act's policies for protection of coastal resources. The U.S. Green Building Council's LEED standard is used as criteria in several local governments in California, and is also the standard chosen by the Governor of California for new and renovated state-owned buildings.[3]

(6) Fee reductions are not exclusively an action of the Commission. Any applicant who chooses to dispute the decision of the executive director to reduce, or not reduce, fees, may appeal the decision to the Commission. The Commission has the authority to waive or reduce filing fees under the existing regulations in section 13055(h)(1).

45) Comment 16J states that the "Commission ignores feasible work and cost savings that would reduce its costs and avoid any fee increases above those supported by the California Consumer Price Index. Such savings measure include, e.g., increased productivity through staff training, motivation, and modern equipment; real-time management of existing staff functions; avoidance of make-work appeals, regulatory duplication, or meddling in local governments' reasonable implementation and enforcement of their certified Local Coastal Programs."

Response: The Commission operates under a very constrained budget. All major budget changes must be approved by the Department of Finance, the Legislature and the Governor as part of the state budget process. The Commission consistently works to minimize its operating costs.

[3] See California Executive Order No. S-20-04 (Nov. 11, 2004).

46) Comment 17C is not related to the proposed amendments.

47) Comment 18E refers to the fee for appeals.

Response: The revision to the amendments does not enact a fee for certain appeals, it simply creates a reference to the fee in a related section of the Commission's regulations. The fee was added in the originally proposed amendments, and therefore, this comment was submitted after the appropriate deadline. However, if the comment had been submitted by the deadline, the Commission would have the following response: Section 30620(c)(1) of the Coastal Act authorizes the Commission to charge filing fees for any filing, except LCP submittals. Although the Commission could charge a fee for all appeals, it determined that this may discourage public participation in the coastal program. However, the Commission determined it would be appropriate to charge appeal fees to applicants who are appealing their own project to the Coastal Commission because it was denied at the local level. In this circumstance, the person filing the appeal is the direct beneficiary of the Commission's staff resources and a fee would be appropriate.

48) Comment 19A discusses the disparity between the fees charged by the Bay Conservation and Development Commission (BCDC) and the Commission's proposed fees. The commenter also states that the Commission has proposed to generate 50% of its regulatory budget from 12% - 14% of its regulatory workload.

Response: These comments refer to the originally proposed amendments, not the revisions, and because they were received during the comment period for revisions, the Commission is not required to respond to them. However, if the comment had been received by the appropriate deadline, the Commission's response would be the following: The BCDC and Coastal Commission are entirely separate state agencies. The BCDC is governed by the McAteer-Petris Act and the Coastal Commission is governed by the Coastal Act. These two separate legislative acts result in two separate agencies. The BCDC's jurisdiction covers development in the S.F. Bay on areas of fill and within 100 feet of the shoreline. The Commission's jurisdiction covers development in the remainder of California's coastal zone which includes state waters from the coast to three miles offshore, state tidelands, and uplands west of the coastal zone boundary, which extends as far as 5 miles inland. The most significant distinction between the BCDC and the Coastal Commission is their respective standard of review for land-based permit applications. The McAteer-Petris Act requires the BCDC to review these types of applications predominantly to ensure adequate public access to the San Francisco Bay, while the Coastal Act requires development to conform to a wide range of policies that relate to issues such as environmentally sensitive habitat, recreation and public access.

The legislature has mandated that BCDC recover 20% of its regulatory costs. The legislature has not delivered a similar mandate to the Commission. The Commission's guidance comes from the Coastal Act section 30620(c)(1) which allows it to charge a reasonable filing fee, as well as to seek reimbursement of its actual expenses.

The Commission has updated its estimate of regulatory costs based on the California Court of Appeals decision in the case of *Cal. Assn. Of Prof. Scientists v. CDFG* (2000) 79 Cal.App.4th

935, 944. In this case, the Court states that regulatory costs "include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement."

In 2004, the Legislative Analyst's Office (LAO) issued its analysis of the FY 2004-2005 Budget Bill and focused on the Commission's funding structure and its filing fees. In their report, the LAO documented that the General Fund portion of the Commission's estimated regulatory costs was $5.8M. In light of the Court's decision, the Commission has updated and expanded this estimate to be more inclusive. The Commission's updated estimate is $10.3M.

The Commission's current filing fee revenue, calculated using this revised estimate, constitutes approximately 5% of its regulatory costs. The projected filing fee revenue that would result from the proposed fees is between $2M and $3.65M. This constitutes approximately 20% to 37% of the Commission's annual regulatory costs.

The commenter states that the revenue would be generated from 12% - 14% of its annual regulatory budget. The commenter does not provide any explanation for how this figure was arrived at, and provides no supporting evidence. The Commission disagrees that its filing fees are generated from only 12% to 14% of its regulatory workload.

49) Comment 19B states that there are no substantive differences between the regulatory programs of the BCDC and the Coastal Commission. The commenter also states that the fees would disadvantage the Commission's applicants.

Response: These comments refer to the originally proposed amendments, not the revisions, and because they were received during the comment period for revisions, the Commission is not required to respond to them. However, if the comment had been received by the appropriate deadline, the Commission's response would be the following: As stated above in response 48, there are substantial differences between the BCDC's regulatory responsibilities and the Coastal Commission's regulatory responsibilities. These differences result in different fee structures. A more appropriate comparison can be drawn between the Commission's regulatory requirements and the requirements of local government's planning departments. That is why the Commission has compared its proposed fees against the planning fees of local governments. The fee comparison shows that the proposed fees are comparable to other fees in the coastal zone, and that the Commission's applicants would not be disadvantaged.

50) Comment 19C states that the commenter can not identify statutory authority for the Commission's proposed fee for appeals.

Response: These comments refer to the originally proposed amendments, not the revisions, and because they were received during the comment period for revisions, the Commission is not required to respond to them. However, if the comment had been received by the appropriate deadline, the Commission's response would be the following: In section 30620(c)(1) of the Coastal Act, the Commission is authorized to charge filing fees and reimbursement of expenses for all filings except LCP submittals. An appeal is a filing.

50) Comment 19D points to a typo made in the text of the regulations attached to the notice of revisions.

Response: Staff accidentally omitted the strikeout of two deleted figures on the text of the amendments that were attached to the notice of revisions and the November staff report. However, the table included within the notice and within the staff report was correct. Staff has corrected the error.

51) Comment 19E states that the regulations should include a rounding provision to use with the fees that are based on square footage and development cost.

Response: These comments refer to the originally proposed amendments, not the revisions, and because they were received during the comment period for revisions, the Commission is not required to respond to them. However, if the comment had been received by the appropriate deadline, the Commission's response would be the following: This fee structure has been in place without a rounding provision since 1991, and there is no evidence that its absence has ever hindered the calculation of fees. Projects rarely fall outside of a whole dollar or whole square foot figure, and if this does happen, the common method of rounding up for amounts at or above .5 and rounding down for amounts below .5 would be utilized.

52) Comment 19F states that the fee reduction for affordable housing lacks a standard threshold.

Response: These comments refer to the originally proposed amendments, not the revisions, and because they were received during the comment period for revisions, the Commission is not required to respond to them. However, if the comment had been received by the appropriate deadline, the Commission's response would be the following: The Commission is not proposing a specific threshold for determining what projects would qualify for a fee reduction because there are too many project variables that would need consideration. For example, the availability of affordable housing in a given region would determine if a project with a particular number of affordable units would be significant or not for purposes of the magnitude of the fee reduction for which that project qualifies.

53) Oral comment 20 states that the commenter, who often represents energy companies during project construction, is generally used to reimbursing agencies government agencies for the entirety of their costs, including consultant bills, staff time, staff travel, overhead, etc. The commenter asked what fees an energy company would be paying for a large project under the proposed fee schedule.

Response: The commenter is discussing full cost recovery fees which are used by many government agencies that perform regulatory review. The Commission has always used a flat fee system, and is not proposing to change that at this time. Under the proposed fees, a large energy project would most likely be charged a fee based on development cost. For very large projects, additional reimbursements for staff travel or other expenses may be requested by the Commission, but in the past, such requests have been made to few project applicants. The proposed amendments would not affect the Commission's ability to continue to make such requests.

54) Oral comment 21A states that the Coastal Commission is a limited purpose agency and should therefore be funded by the state's General Fund.

Response: The proposed amendments will have no effect on the Commission's funding. The Commission will continue to be funded through a combination of state and federal funds, including the state General Fund.

55) Oral comment 21B states that the Commission is only authorized, through Coastal Act section 30620(c), to require a reasonable filing fee plus reimbursement of expenses, not regulatory fees.

Response: The Commission has charged flat fees since the formation of the agency. The revenue from these fees constitutes a portion of the agency's expenses. The regulation amendments do not make any changes to this structure, they simply increase the fees so that they constitute a larger portion of the agency's expenses which are incurred in processing applications.

The California Supreme Court, in the case of *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, describes 3 types of fees:

1. Special assessments, based on the value of benefits conferred on property;
2. Development fees, exacted in return for permits or other government privileges; and
3. Regulatory fees, imposed under the police power.

In the context of a discussion of a "regulatory fee" (the fee that CDFG charges for performing reviews of proposed projects under the CEQA), the California Court of Appeals, in *Cal. Assn. Of Prof. Scientists (CAPS) v. CDFG* (2000) 79 Cal.App.4th 935, 944, cited *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165, for the proposition that the costs for which a "regulatory fee" can be charged "include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." The Coastal Commission incurs all of these costs in the course of processing an application for a development permit

The more recent case of *Collier v. City and County of SF* (2007) 151 Cal.App.4th 1326 concerns a fee charged by the Dept. of Building Inspection (DBI) to "all persons interested in obtaining a SF building permit [who] submit an application [for such a permit] to DBI." The fees at issue in *Collier* are directly analogous to the Coastal Commission's permit application and other filing fees. After a discussion of the various fee categories as listed in *Sinclair*, including "development fees exacted in return for building permits," the court states unequivocally that "it is undisputed that we are concerned here only with regulatory fees." *Collier*, 151 Cal.App.4th at 1339.

In the cases mentioned above, the courts describe regulatory fees in a way that directly corresponds to the Coastal Commission's fees, and therefore it is appropriate to consider them as such.

56) Oral comment 21C states that the proposed filing fees would generate upwards of 50% of the Commission's costs.

Response: The Commission has updated its estimate of regulatory costs based on the California Court of Appeals decision in the case of *Cal. Assn. Of Prof. Scientists v. CDFG* (2000) 79 Cal.App.4th 935, 944. In this case, the Court states that regulatory costs "include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement."

In 2004, the Legislative Analyst's Office (LAO) issued its analysis of the FY 2004-2005 Budget Bill and focused on the Commission's funding structure and its filing fees. In their report, the LAO documented that the General Fund portion of the Commission's estimated regulatory costs was $5.8M. In light of the Court's decision, the Commission has updated and expanded this estimate to be more inclusive. The Commission's updated estimate is $10.3M.

The Commission's current filing fee revenue, calculated using this revised estimate, constitutes approximately 5% of its regulatory costs. The projected filing fee revenue that would result from the proposed fees is between $2M and $3.65M. This constitutes approximately 20% to 37% of the Commission's annual regulatory costs.

57) Oral comment 21E states that the Consumer Price Index increased by only 51% since the Commission last raised its fees in 1991, and that the Commission should not increase its fees beyond that percentage.

Response: The Commission considered multiplying the fees by 1.5 to raise them according to the increase in the Consumer Price Index since 1991. However, that increase is not sufficient to address the time and effort it takes to review projects given the current statutory and regulatory environment, risk of litigation, and high level of technical information associated with applications.

58) Oral comment 21F states that the Commission lacks the authority to raise its fees.

Response: The Commission's authority to require fees is in section 30620(c)(1) of the Coastal Act. It states that the Commission is able to collect a filing fee and reimbursement of expenses. The proposed fees will generate 20% to 37% of the Commission's expenses, and therefore do not exceed the fees that the Commission is able to charge.

59) Oral comment 21G states broadly, that the proposed amendments are full of ambiguities and internal inconsistencies.

Response: The Commission disagrees. The Commission has made efforts to ensure clear regulations that are internally consistent. The commenter does not identify specific regulations or regulation amendments that display these problems.

60) Oral comment 21J is a request for the Commission to submit all testimony and comments to the Office of Administrative Law.

Response: All such materials will be included with the final rulemaking package.